

SUBMISSION TO THE TASMANIAN HOUSE OF ASSEMBLY SELECT COMMITTEE ON THE *HOUSE OF ASSEMBLY RESTORATION BILL 2018 (No. 55)*.

SUBMITTED BY CATH HUGHES. MARCH 2019.

Terms of Reference

A Select Committee be appointed, with power to send for persons and papers and records, to inquire into and report upon:-

- (a) the House of Assembly Restoration Bill 2018 (No.55);
 - (b) Other matters incidental thereto.
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Executive Summary and Recommendations

There have been three dedicated State-initiated independent investigations into the optimum number of Tasmanian Members of Parliament (MPs) since, and including, the 1984 Ogilvie Report., and the 1994 Morling Inquiry Report. Neither of these supported a reduction in MP numbers, and specifically warned against eroding the representativeness of the House of Assembly. Both reports emphasised the need to ensure adequate MP numbers to provide for: capacity and functionality of the Government and Executive; capacity to provide both a functioning Cabinet and Backbench, viable Opposition benches, and a robust Parliamentary Committee system.

Since the 1998 cut in numbers occurred, in blatant disregard of these taxpayer-funded inquiries, a range of former and current MPs, political commentators and analysts, and media outlets have raised serious concerns about the 'gutting' of the parliament and the ramifications it has had for democracy, transparency, and good governance.

Recommendations:

- 1) That the Committee acknowledges that many of the fundamental points of warning provided by inquiries such as the Ogilvie and Morling reports have come to pass: specifically in the reduced capacity of the Cabinet, the Backbench, the Opposition and Cross-benches and the rigour of the Parliamentary Committee system, the latter of which also directly impacts on the work of Legislative Councillors;
- 2) That the Committee formally recognises recent acknowledgements by those who were amongst the architects of the 1998 cut in numbers that the reduction was a mistake, and one which has not resulted in any meaningful financial savings but has instead damaged the functionality of our Parliament; and
- 3) That the Committee recommends the House of Assembly numbers be restored to that prior the 1998 reduction, that being seven Members elected from five electorates, and that the current *House of Assembly Restoration Bill 2018 (No. 55)* is an appropriate mechanism by which to do so.

Introduction

Over twenty years ago in July 1998, the majority of the Tasmanian Parliament voted to reduce the House of Assembly by ten elected representatives to its current 25 MPs, and the Legislative Council by four from 19 to 15 MLCs. Ironically this so-called trade-off to justify the deeply unpopular 40 per cent payrise (under the Ray Groom majority Liberal government) to Members of Parliament, saw the Tasmanian voters in a lose-lose situation. They lost the degree of democratic accessibility to their elected representatives previously enjoyed, lost the degree of democratic accountability, and also lost both parliamentary (in the form of a functioning committee system) and government productivity, while financial costs of highly-paid unrepresentative political appointee staffers increased.

It must be acknowledged that the current dysfunctional House of Assembly is not the direct making of current individual elected representatives in the Lower House who have inherited this problem from their Labor or Liberal predecessors. This situation presents both challenges and opportunities. The fact that current individual representatives within the Assembly were not directly involved in the 1998 decision, provides an opportunity to get on and address this long-standing problem without being bogged down by blame, or any sense of having to justify previous voting records. This opportunity raises the question: will our current crop of elected representatives rise to the challenge that so many others before them have avoided?

It is also worth noting at the outset, that despite a growing disquiet over the negative impact the cut in Assembly numbers has wrecked upon the performance of that Chamber and the quality of governance in the state, it is not perceived as having had such a detrimental effect upon the capacity of the Legislative Council. The emphasis of subsequent calls to restore the numbers has focused upon the Lower House almost exclusively, as is reflected by the current Bill under consideration of this Committee.

Similarly, it is noted that although recent public debate has identified a range of issues which required addressing in order to strengthen Tasmania's democracy, such as political donation reform for example, such matters are beyond the purview of both the specific Bill No 55 of 2018, and this committee's examination. Therefore, while recognising the veracity of those broader areas of potential and long-overdue reforms, this submission will focus solely upon the question of restoring the House of Assembly numbers.

This Assembly Committee inquiry into the *House of Assembly Restoration Bill* (No. 55 of 2018) is the third such dedicated inquiry into the optimal number of Tasmanian elected representatives since the 1984 Ogilvie Report, (and there were numerous before that since the 1959 recommendation to restore the Assembly from 30 to 35 MPs). Additionally, the issue of MP numbers has been raised within other investigations such as the Beaumont Royal Commission Report of 1982, the 1996 Nixon Report¹, and the 2009 Joint House Select Committee on Ethical Conduct. It is beyond the scope of this submission to interrogate the substantive issue of the Committee's inquiry to the degree undertaken by such previous and resourced investigations. Instead, the focus of this submission will be to reiterate that these earlier dedicated investigations' findings remain pertinent to the current debate, and that in fact, recent events within Tasmania's political history serve to reinforce their respective findings regarding the optimum number of Members of the Tasmanian House of Assembly.

¹ *The Nixon Report: Tasmania Into the 21st Century*, released on 30 July 1997, was the outcome of the Commonwealth-State Inquiry into the Tasmanian Economy, chaired by former Fraser Minister, the Hon. Peter Nixon AO.

In summary, this submission recommends that Tasmania has held sufficient inquiries into the number of MPs, and we just now need to get on with undoing the damage inflicted in 1998, and restore the numbers back to 35 members elected from five seven-member electorates in the interests of restoring both a functioning Parliament, and restoring the Tasmanian public's faith in our political institutions. The *House of Assembly Restoration Bill* (No. 55 of 2018) provides the necessary mechanism to achieve a return to the workable number of 35 members in our House of government.

Part 1: Establishing Optimal MP Numbers Evaluation Criteria

HISTORIC OVERVIEW: PREVIOUS INQUIRIES PRIOR TO 1998 CUT IN NUMBERS

As mentioned above, this Select Committee inquiry into the matter of MP numbers in the Assembly is the most recent in a long line of inquiries and reports into the composition of the Tasmanian Parliament, including the: 1982 Beaumont Report arising from the Royal Commission into the *Constitution Act 1934*, the 1984 Ogilvie Report, the 1994 Morling Inquiry Report, and the 2011 Boyce *Report from the Review of the Proposal to Restore the House of Assembly to 35 Members*. The latter report states that since the establishment of the Tasmanian Parliament in 1856 there have been “*more than twenty attempts ... made to expand or contract*” its numbers.²

It is worthwhile revisiting the findings of these specific inquiries, within the context of this Committee's Terms of Reference, as they serve to provide a clear ‘before’ picture against which to measure the current situation.

When reviewing the four previous state-initiated reports into the size and role of Tasmania's Parliament a general consensus emerges regarding key parliamentary roles and function criteria crucial to the functioning of a Westminster-based Parliament. These key criteria include: functionality of Government and the Executive, effectiveness of the Parliament, and its representativeness of, and connection with, the broader community. These criteria still serve as useful benchmarks for the current debate.

1.1 Capacity and Functionality of Government and the Executive

The 1994 Morling Report stated that:

*“in order for a Parliament to work effectively it must have sufficient members to enable it to discharge its functions adequately”, and advised, “a House of Assembly with fewer than 35 members would have difficulty in discharging adequately its functions as the House of Government. We do not think a reduction in the number of members of the Assembly should be made at the risk of impairing its ability to discharge those functions.”*³

² *Review of the Proposal to Restore the House of Assembly to 35 Members*, Emeritus Professor P. J. Boyce AO, Independent Appointee, 8 March 2011: pg 2.

³ *Report of the Board of Inquiry into the Size and Constitution of the Tasmanian Parliament*, The Hon T. R. Morling QC (Chair), Ralph JK Chapman PhD, Mr BR Archer, and Hon. BK Miller AO, December 1994: pg 1.

As a list of 10 eminent academics warned in an Open Letter to Parliamentarians at the time of the 1998 cut in numbers:

“There are serious implications for the democratic scope of government in any cut to Parliamentary numbers... There is also a need to revisit and debate the extent to which reduced numbers will curtail Parliament’s capacity to provide effective oversight and control of Executive action... the very institution of Parliament itself may be debased by the proposal to reduce parliamentary numbers.” (Snell et al, 1998).⁴

1.1.1) A Robust Cabinet and Ministerial Responsibility

As the Ogilvie Report states: *“Cabinet is the principal institution in the decision-making process of Government.”*⁵ As such, it is expected that Ministers are selected from a competitive pool of talent, based upon proven parliamentary skills, expertise and competence. Not only is it deemed a privilege to serve as a Cabinet Minister, but with it comes extensive responsibilities. As such, under the Westminster-style Parliaments it is perceived as consisting of the ‘cream’ of a particular government, or parliamentary, crop. An ascension to Cabinet had to be earned, and once there, be maintained in the face of parliamentary scrutiny and potential Backbench competition. These rigours were considered the ‘check on power’, and especially the risk of complacency and becoming ‘out of touch’ with the broader community.

Additional to parliamentary responsibilities, Ministers also must administer portfolio responsibilities and take on oversight of relevant government departments. At the time of writing their report, the Ogilvie Advisory Committee was also aware, that Tasmania’s ratio of portfolio responsibilities to ministers was amongst the highest when compared with other Australian jurisdictions.

*“It obviously stretches the principle of individual ministerial responsibility to its limits when one Minister is responsible for say five Departments, five Authorities and a great diversity of staff.”*⁶

For many Tasmanian Ministers since 1998, a mere five separate Departments sounds like luxury!

1.1.2) A Viable Backbench

The 1984 Ogilvie report is quite explicit in its assessment of the implications of reducing the Assembly to 25 Members, and the risk of an election returning a governing Party of 13 MPs or less. In a hypothetical scenario with a government of only 13 MPs, which the current Forty-Eight Parliament has, the Ogilvie Advisory Committee calculated:

“in such circumstances, after providing for the Speaker and Chairman of Committees, the Government would have a backbench of only two Members. Plainly a Backbench

⁴ *An Open Letter to the Members of the House of Assembly & the Legislative Council*, Rick Snell, Dr Kate Crowley, Dr Ralph Chapman, Dr Dallas Hanson, Prof. David Hogan, Assoc. Prof Richard Herr, Assoc. Prof. Peter Hay, Dr Bruce Davis, Assoc Prof John Todd, Prof W.A. Townsley, 20 July 1998.

⁵ *Report of the Advisory Committee on the Proposed Reduction in the Number of Members Elected to Both Houses of the Tasmanian Parliament*, Mr Albert Ogilvie, Sir Geoffrey Feet, Sir George Cartland, 19 October 1984: pg 29.

⁶ *Report of the Advisory Committee on the Proposed Reduction in the Number of Members Elected to Both Houses of the Tasmanian Parliament*, Mr Albert Ogilvie, Sir Geoffrey Feet, Sir George Cartland, 19 October 1984: pg 32.

of that size would not constitute an adequate number within which new Members may gain parliamentary experience and from which future ministerial aspirants could be selected ... if the membership of Parliament is reduced the choice of potential Ministers would be diminished to the extent that in a Parliament with a Lower House of 30 or 25, there may virtually be no choice as to who is to be a Minister.”⁷

The 1994 Morling Inquiry states, “in our view a backbench of about 6 is close to the practicable minimum number if the backbench is to serve any real purpose.”⁸ However, once the Speaker and Committee Chairs have also been selected, the Backbench risks being further eroded.

The importance of a functioning Backbench in a Westminster-style parliament cannot be underestimated. These MPs are responsible for the populating of Parliamentary Committees responsible for the refinement of the legislative and policy development function, as well as facilitate access and involvement of constituents with the government. Of particular importance is the feedback loop that members of the public can provide the Ministry via Backbenchers, who are meant to be the ‘eyes and ears’ of government on the ground, plus provide an accountability mechanism upon government members. This is the training ground for newly elected Members, and as such, a prospective source of skilled future Ministers. However, as experts and inquiries warned prior the 1998 cut, an insufficient number of Backbenchers risked the few remaining MPs being over stretched in an attempt to cover all committee and other parliamentary responsibilities, and as such becoming ‘invisible’ to the public to the same degree as Cabinet members. The clear warning from these reports was that a reduced Backbench risked severing the communication feedback loop between government and the electorate.

1.2 Effectiveness of Parliament to Provide Good Governance

As the identified ‘House of Government’ a key function of the House of Assembly is to scrutinise the Executive. As summarised by the Beaumont Report, classic constitutional theory decrees that the Executive can only exist while it retains the confidence of the Lower House, making the Executive “responsible” to the House. In turn, the House is ‘responsible’ to the people, as demonstrated by periodic elections. The solidification of the Party dominated parliamentary system since World War II has seen in fact that often the reverse is the case, that executive authority outweighs parliamentary authority. Hence this trend, serves to highlight the importance of maintaining, if not strengthening, the accountability mechanisms available to the House in ensuring good governance. A functioning Backbench is one such mechanism, as is a viable Opposition and Cross-bench.

It is worth noting that the Ogilvie Advisory Committee met with Premier Gray four months after their commissioning to request their Terms of Reference be amended specifically to allow the evaluation of the proposed cuts against key criteria including good governance:

“We thought it desirable that any proposal to reduce the number of members of Parliament should be examined in the light of its likely effect on the overall

⁷ Ibid: pg 30.

⁸ *Report of the Board of Inquiry into the Size and Constitution of the Tasmanian Parliament*, The Hon T. R. Morling QC (Chair), Ralph JK Chapman PhD, Mr BR Archer, and Hon. BK Miller AO, December 1994: pg 4.

constitutional, political, legislative and electoral requirements necessary for the good government and due administration of the State.”⁹

Subsequent to the expansion of the Inquiry’s terms of reference, the Ogilvie Report recommended, “ ... that having investigated the proposal to reduce the number of Members elected to both Houses of Parliament in accordance with our terms of reference and having reached the conclusions recorded in this Report, it is our opinion that it would not be in the best interest of the state of Tasmania for a reduction of the number of Members of Parliament to be included among the measures to be taken to economise in the cost of the Government of the State.”¹⁰

1.2.1) A Viable Opposition and Cross-benches

Evidence from these independent inquiries and other expert advice, emphasised that not only did any proposed reduction in MP numbers threaten the capacity of the Cabinet, and the government members on the Backbench to fulfil their functions adequately, but that the Opposition and Cross-benches’ capacity to meet their elected responsibilities to Parliament, and to their electors, would be drastically weakened.

The Opposition, and also the Cross-bench where they exist, is recognised in Westminster-style Parliaments as the “alternative government” and as such has vitally important accountability functions within the parliamentary system. These include: the articulation of differing or minority opinions within the community, to scrutinise, critique and seek to improve via amendments legislation, scrutinise public accounts and administration, pursue further information and clarification of policy, participate in committees, as well as pursue avenues for legitimate community grievances to be heard such as petitions etc.

The Ogilvie Report states simply, “any reduction in the size of the House of Assembly must necessarily reduce the size of the Opposition and thereby diminish its effectiveness in discharging [its] important duties...”¹¹

The report then went on to warn, “a reduction in the number of Members in either House of Parliament would adversely effect the nature and quality of public contact with and influence on, Members of Parliament.”¹²

1.2.2) Parliamentary Committee System

Parliamentary committees are an integral component of Westminster-style parliaments. They allow for more detailed and indepth examination of legislation and/or matters of policy, and also provide a mechanism by which non-elected experts and other interested members of the public can provide their expertise on the matter at hand. As an extension of the Parliament, via the delegated authority provided by their respective Chamber(s), Committees have been described as a mechanism by which ‘parliament is taken to the people’. The membership of Committees were traditionally drawn from the Opposition, Cross-bench, and Backbench members.

⁹ Report of the Advisory Committee on the Proposed Reduction in the Number of Members Elected to Both Houses of the Tasmanian Parliament, Mr Albert Ogilvie, Sir Geoffrey Feet, Sir George Cartland, 19 October 1984: pg 3.

¹⁰ Ibid: pg 63.

¹¹ Ibid: pg 37.

¹² Ibid: pg 62.

The Ogilvie Report states, “a reduction in the numbers of the House of Assembly must either affect the quantity or quality of Parliamentary committee work because of its effect on each Member’s workload”.¹³

This was reiterated by the later 1994 Morling Inquiry Report which warned, “a reduction in the number of members of the Assembly would prejudice the implementation of a sound and effective committee system...”¹⁴

1.3 Representativeness of the Assembly

Tasmania’s electoral system for the House of Assembly, Hare-Clark, has received global recognition as being amongst the fairest and most democratic in the world. As renowned Hare-Clark specialist, George Howlett stated, “equal party representation on unequal voting strength is a denial of electoral justice to the voters.”¹⁵

Hare-Clark’s strengths were summarised in the 1982 Beaumont Report:

*“The major advantage claimed for the system is that the composition of the House of Assembly tends to reflect faithfully the wishes of the electors viewed on a State basis, and that a party with a minority of first preferences is most unlikely to obtain a majority of seats, as sometimes occurs in systems with single-member constituencies. A further significant advantage claimed is that all electors have a wide choice of candidates within the major parties, whereas in single-member electorates there is often no choice of candidates for an elector...”*¹⁶

This perspective was reiterated by the 1984 Ogilvie Report which states unequivocally that: **“retention of the existing number of Members of the House of Assembly is desirable to minimise the risk of deadlocks and balance of power situations occurring and to maximise the effectiveness of the Hare-Clark electoral system so that a majority of voters is likely to be represented by a majority of Members in the House of Assembly.”**¹⁷

Notwithstanding the few detractors of Hare-Clark in general, prior the 1998 cut in numbers a consistent theme emerging from expertise and advice at the time was the concern that the integrity and intent of the Hare-Clark electoral system must be retained. Changes to the number of MPs risked undermining the finely-tuned ratio designed to ensure an accurate translation of votes cast into seats obtained, which was most accurately expressed in the model of 35 MPs sourced from five seven-member electorates.

A recognised advantage of multi-member electorates, especially from the voter’s perspective, is the opportunity for there to be at least one MP who more accurately ‘fits’ or represents a voter’s

¹³ Ibid: pg 44.

¹⁴ *Report of the Board of Inquiry into the Size and Constitution of the Tasmanian Parliament*, The Hon T. R. Morling QC (Chair), Ralph JK Chapman PhD, Mr BR Archer, and Hon. BK Miller AO, December 1994: pg 4.

¹⁵ *Democratic Representation Under the Hare-Clark System: The need for Seven-Member Electorates*, George Howatt MA, 1958: pg 27.

¹⁶ *Report of the Royal Commission into the Constitution Act 1934 Tasmania*, Mr Bryan Beaumont QC (Chair), Prof Leslie Zines, the Hon. Charles BM Fenton AC, 31 May 1982: pg 6.

¹⁷ *Report of the Advisory Committee on the Proposed Reduction in the Number of Members Elected to Both Houses of the Tasmanian Parliament*, Mr Albert Ogilvie, Sir Geoffrey Feet, Sir George Cartland, 19 October 1984: pg 60.

opinion depending on the issues of the day. The accessibility of a range of MPs elected by one electorate, clearly ramps up a sense of 'competition both inter-and intra-party lines, ensuring that the diligent of those MPs are continuing to work hard to be across the issues important to a range of constituent, not just their own party members and supporters. The impetus to remain so diligent can also contribute to both a greater and direct sense of accountability and reduced complacency, as well as accessibility.

1.4 Propensity for Balance of Power Situations

At the time of the 1998 push to cut the House of Assembly numbers, it was often argued as a desirable manner by which to both eliminate the Tasmanian Greens Party from the Parliament, and, by doing so, also prevent the apparently undesirable balance of power electoral outcome. The latter half of that assumption flew in the face of the Ogilvie Report's findings, which stated:

*"By reducing the membership to 25 Members in the Lower House, the opportunity for any Independent to hold the balance of power would be increased significantly. In a 25 Member House individual quotas would rise from 12.5% to 16.7%. In a contest between two parties of nearly equal strength, it is most unlikely that a result other than 3:2 would be achieved in any electorate by either party. Further, considering that in most cases only a small number of votes decide the final seat a 3:2 result in one electorate could well be offset by a 2:3 result in another and give a 13:12 result if only two major parties are contesting the election. However, as history has shown Independents or minor parties have a tendency to gain representation in a majority of elections, and with a 25 Member House only one Independent would need to obtain a seat for that person almost certainly to hold the balance of power..."*¹⁸

Further, academics and political analysts raised during the 1998 debate that:

*"We are aware of the pressures and complexities of minority government, and of the populist pressures for smaller, more efficient government that confront you daily. However, much of the pressure needs to be recognised as resting upon historically inaccurate and entirely untested claims that minority government is unstable and that smaller Parliament is more efficient."*¹⁹

Despite the expert warnings that assertions a smaller Parliament is more efficient are wrong, and that minority government would not necessarily be eradicated by a smaller parliament but could actually increase the possibility of such, the 1998 cut proceeded.

¹⁸ Ibid: pg 25.

¹⁹ *An Open Letter to the Members of the House of Assembly & the Legislative Council*, Rick Snell, Dr Kate Crowley, Dr Ralph Chapman, Dr Dallas Hanson, Prof. David Hogan, Assoc. Prof Richard Herr, Assoc. Prof. Peter Hay, Dr Bruce Davis, Assoc Prof John Todd, Prof W.A. Townsley, 20 July 1998.

Part 2: Post-1998 Reality Check

Since the July 1998 cut in MP numbers – across both the House of Assembly and the Legislative Council – there had been a growing public consensus that the cut to the Assembly was a mistake: both in motive and in effect. (As mentioned in the Introduction, there does not appear to be the equivalent public concern that the work of the Upper House has been impacted as detrimentally by their reduction from 19 MLCs to the current 15).

At the time of the 1998 cuts, any attempts to voice the concern that the so-called reducing costs justification to gut the Assembly was in fact a sham stalking-horse intended to disguise the real intent of ‘gerrymandering’ the system to prevent a particular political party or political persuasion to be elected – that being the Tasmanian Greens – was fobbed off and ridiculed.

Since then, however, a number of political players have placed on the public record that indeed the driving motivation was to prevent a sector of the community from achieving parliamentary representation. Former Labor Minister, the Hon. David Llewellyn stated on ABC Radio in 2011:

“... And, obviously, you know, I think we’re in this situation – and, again, probably one of the other topics - and Peg touched on it a moment ago, is actually the size of Parliament. And I could admit now, I guess, as being part of the government back in 1998 or 1997 in conspiring – I suppose that’s not the best of words, but I think that’s what it was -... - between the Liberal Party and the Labor Party to reduce the size of Parliament on the basis that it would take more percentage from minor parties to actually win a seat. And I think that was wrong. I’ll admit it was wrong. And I think we really should do something about that.”²⁰ (Llewellyn 2011).

Such confirmation of a deliberate orchestrated and undemocratic abuse of power is in itself sufficient justification, on the grounds of natural justice, to overturn the 1998 decision and restore the Assembly numbers to 35.

The growing awareness of the Assembly’s degree of dysfunction and its detrimental impact on the quality and standard of governance consolidated in the mid-2000s resulting in all three political parties represented in the Parliament acknowledging that the 1998 cut was a mistake that needed to be rectified. This culminated in the 2010 September Agreement on Parliamentary reform signed by the then-three Party Leaders, and the one public inquiry since the cut in numbers, which was undertaken by the Independent Appointee, Emeritus Professor P.J. Boyce in 2011.

Part 1 of this submission revisited the predominantly independent and expert advice concerned with the optimal parliamentary numbers available in the public arena prior to the 1998 cut in MP numbers, to provide a ‘before’ scenario, Part 2 will examine the ‘after’ scenario. Similar to the 2011 Boyce Review, this current Committee inquiry is in a position to assess the actual situation and reality of a reduced Parliament against the warnings received prior to 1998.

2.1 Capacity and Functionality of Government and the Executive

Pre – 1998 Prediction: As discussed above, both the 1984 Ogilvie and 1994 Morling independent expert panels presented strong arguments that any reduction in the number of House of Assembly MPs would have a detrimental impact upon the capacity of both the Cabinet and government of the day to fulfil its functions and responsibilities adequately.

²⁰ ABC Radio Statewide Mornings- ‘Friday Forum’ transcript, featuring P. Putt, T. Saur and D. Llewellyn, 13 May 2011.

Specifically, Tasmanians were warned that there would be a reduced talent pool from which to select prospective Ministers. Additionally, the small Cabinet itself would struggle to deliver diligent Ministerial responsibility should individual Ministers struggle to cope with a portfolio ratio amongst the highest in the nation. Predictions were also made, but ignored, that in order to cope with ministerial workloads there would develop a growing reliance upon political advisors and government bureaucrats.

Post – 1998 Eventuality:

The first post-1998 cut in numbers Parliament, the Forty-Fourth, saw the Bacon government elected with 14 members. Despite this being one more than the Ogilvie identified bare-minimum of 13 MPs, the Bacon Cabinet needed to source one of its seven Ministers, the Treasurer David Crean, from the Legislative Council. Six Ministers, plus a Cabinet Secretary, were based in the Lower House, plus the Speaker Michael Polley was sourced from the Labor MPs, barely leaving the six Backbenchers identified by the Morling Inquiry as being the bare minimum possible.

Despite taking the controversial and criticised option of locating a Minister in the Upper House – controversial on the basis that it undermines the scrutiny and direct questioning capacity of the Opposition and Cross-benches, but also in the instance of Dr Crean, removing the Treasurer from the Lower House ‘Treasury benches’ – the Bacon Ministry quickly exposed the workload and accountability flaws inherent in the reduction of numbers. There were complaints from Ministers, such as the Hon. David Llewellyn, of impossible workloads in attempting to keep up with a large number of ministerial portfolios and ‘mega-departments’, plus the lack of appropriate Backbench reserve should serving Ministers resign.

In 2006 two Liberal MPs, The Hon. Michael Hodgman, and the Hon. Brett Whitely, both stated during their respective speeches at the formal declaration of the poll personal reservations about the cut in MP numbers, which in their view has now been replaced by an increased number of unelected and unaccountable bureaucrats.

The struggle to source a viable and fully accountable Cabinet, while still providing for a critical-mass Backbench continued to plague the subsequent majority governments of 2002 and 2006 respectively. The placing of the Treasurer in the Upper House (the Hon. Michael Aird MLC following Dr Crean’s retirement) continued to heighten concerns about the inability of the reduced Parliament to abide by established norms to deliver democratic accountability. Recognised political analyst, Professor Richard Herr wrote:

*“Tasmania’s Parliament is already in serious breach of Westminster conventions by having the Treasurer in the Upper House. Everywhere in the Westminster world, the Government sits on the ‘Treasury benches’ in the Lower House precisely because that is where the power of the purse is located to enable the people to control the Crown.”*²¹

Both periods of government saw Ministers resign their respective Cabinet posts (the Hon Bryan Green, and the Hon. Steven Kons) due to controversy, and others resign due to family or health reasons (the Hon Jim Bacon, and the Hon Paula Wriedt for example), creating additional dilemmas for the Premier of the day in sourcing appropriately skilled and competent Ministers as well as leaving an equally competent Backbench, that was not dominated by disgraced former

²¹ Prof. Richard Herr, *the Mercury* newspaper, 25 September 2008: pg 32.

Ministers. This culminated in a scenario in 2008 which saw then-Premier David Bartlett take the unprecedented move of sourcing three concurrent Ministers from the Legislative Council.

This move prompted then-Liberal Opposition Leader Will Hodgman MP to table a motion in the Lower House calling for an independent public inquiry to be established “on the accountability and effectiveness of the House of Assembly”. Further, not only did Mr Hodgman’s critique assess the ramifications for the role of Cabinet of relying upon Upper House ministers, he also identified what this meant for an effective Backbench when he stated in an Examiner opinion piece, *“the Premier [Bartlett] said... that his appointment of two additional MLCs concentrated the need for reform of our Parliament. What it actually does is concentrate the public’s attention on the lack of talent on the State Labor backbench.”*²²

However, no matter which party is in government, even those with a majority, the inherent unpredictability of individuals’ lives means that there will always be the potential of a Cabinet resignation (for example the Hon. Matt Groom, and the Hon. Adam Brooks), placing more pressure upon the Backbench, especially first-time MPs, and other components of the parliamentary system. Not only has the 1998 cut numbers seen the Backbench’s capacity as a training ground for new MPs be reduced, its membership has become overly-dominated, in a sort of by defacto ‘sin bin’, by disgraced ex-Ministers who in the main can no longer be Cabinet contenders.

As summarised by former Solicitor-General Bill Bale in a Stateline interview subsequent to his retirement:

*“I think the reduction in the size of the parliament, and that is, of the House of Assembly from 35 – 25, was a retrograde step. I don’t believe that 25 people generally elected on a two-party basis, in Tasmania, there may be a third party, certainly a third grouping. I don’t believe that leaves the governing party with enough people on its benches to provide a strong ministry, particularly if two or three ministers, as has happened fairly recently in this state, for one reason or another, find that they’ve got to resign, there’s very, very little on the reserve bench. And I simply don’t believe that leads to good decision making.”*²³

2.2 Effectiveness of Parliament to Provide Good Governance

Pre – 1998 Prediction: Experts and previous state government commissioned reports all warned of the detrimental impact cuts to MP numbers would have on both the Government Backbench and the Opposition benches capacity to fulfil their scrutiny, critiquing and advocacy functions. Additionally, warnings were made about the risk to the capacity of the parliamentary committee system’s capacity to function in a rigorous, effective and efficient manner.

The direct impact of the erosion of these accountability, interrogation and scrutiny functions, we were also told, could result in an unaccountable, disconnected and out-of-touch Executive.

Post – 1998 Eventuality:

A quick newspaper search will quickly inform someone of the range and scale of accountability, transparency and functionality issues which have bogged down successive governments and

²² The Hon. Will Hodgman, *the Examiner*, 24 September 2008: pg 15.

²³ *ABC Stateline Transcript*, with Mr Bill Bale, 18 July 2008.

parliaments, and outraged the Tasmanian public, since the 1998 cut in numbers. Including but not limited to: court cases against a Minister; Ministers resigning due to misleading Parliament allegations; scandals over Ministerial appointments of family members; perceived conflicts of interest, commercial and personal; and the use of fast-tracked legislation to override community disquiet and/or facilitate corporate interests. It is beyond the scope of this submission to examine in any detail these examples, which are readily available elsewhere on the public record.

2.2.1 Impact upon Backbench and Opposition Scrutiny

In 2007, the then-President of the Legislative Council, the Hon. Sue Smith MLC said on the local ABC Statewide radio program:

*"... I think significantly upstairs I haven't seen any disadvantage in the number cutting. I can't say the same for the House of Assembly though. I think we made a significant error in the cutting of numbers in that House, and I think that's reflecting though the Parliament at this stage..."*²⁴

Ms Smith went on to detail her observations of the impacts caused by the cut in numbers:

*"I'm always a believer that if you've got someone looking over your shoulder and eyeing off your seat and putting pressure on you, that you will probably perform at a higher level. And what we have also seen in this process is a lack of capacity now to have a strong backbench for the Government, and as such thus, if you wish to replace a Minister for non-performance or if you just have a Minister who decides that they want to retire, you have difficulty in filling those positions with the best people. And that's not taking anything away from the Ministers of the day we have at the moment. But I think all of them would agree that they perform best knowing full well that there is someone there that thinks they could do that job as well or better than themselves."*²⁵

Acclaimed *Mercury* political commentator Wayne Crawford once described the post-1998 cut in numbers as producing a "sinister side-effect" of reducing:

*"... the extent to which the executive government can be held to account for its actions and decisions. The Government backbench has been all but eliminated and is no longer strong enough to promote a culture that encourages (rather than forbids) the canvassing of dissenting views within the Government ranks. And the Opposition is now so tiny there are not even enough members to "shadow" the Cabinet."*²⁶

Crawford goes on to describe the post-1998 situation as one consisting of "virtually dictatorial, untrammelled government power" responsible for fostering a "culture of cronyism."²⁷

2.2.2 Impact upon Parliamentary Committees

Another detrimental impact of the 1998 cut in numbers has been the reduced capacity of the Parliamentary Committee system. As noted by previous investigations including the Ogilvie and Morling Inquiries, the committee system is a vital component of a working Westminster-style Parliament.

²⁴ ABC Radio Statewide Mornings transcript, with the Hon. Sue Smith MLC, 16 April 2007.

²⁵ Ibid.

²⁶ Mr. Wayne Crawford, *the Mercury*, 23 September 2008: pg 25.

²⁷ Ibid.

However the Tasmanian Parliamentary committee system has become collateral damage of the ideologically driven cut in Assembly numbers. The reduced Backbench and Opposition benches now makes it incredibly difficult to populate both Standing and Select Committees; those which are established see Terms of Reference drag out indefinitely due to difficulty in obtaining quorum on a regular basis due to over-stretched MPs juggling more numerous inquiries simultaneously; and there have been growing complaints that due to these pressures the substantive matter of committee inquiries are not scrutinised as rigorously as they should be. The insufficient number of Assembly MPs to go around has seen the number of Joint House Committees also diminish as Legislative Councillors have become frustrated in stalled terms of references and inquorate sessions due to their Assembly colleagues' regular unavailability.

Mrs Smith MLC informed the local ABC radio during her critique of the negative ramifications of the cut in numbers that:

*"What we have seen in that, I think, is a process now where it is exceptionally difficult for the House of Assembly to do the work that is required of them. You've only got to look at the Committee system. We have one particular Member of the Government who is on nearly every Committee, I think, and we with great respect, because he is a terrific guy, called him the Minister for Committees, because he really has to manoeuvre his life around representing the Government and representing them strongly on most of the committees in around the Parliament..."*²⁸

Additionally, the Boyce Review cites submissions pointing out that due to the shortage of numbers Ministers are now being appointed to the committees charged with scrutinising government, so Cabinet approved, proposals.²⁹ Under the Westminster system, Cabinet and the Minister in question should receive the committee findings as a key oversight and accountability of Executive power mechanism, not participate in their own scrutiny.

A clear indication of how bad things had degenerated was the eventual adoption in 2008 by both Labor and Liberal parties' respective policy positions in support of an independent oversight body, which eventually saw the Tasmanian Integrity Commission established. The loss of public confidence in Tasmania's system of governance, in the main due to the dysfunctional House of Assembly, had become so widespread that it appeared to be in the political interests of parties who had previously rejected and derided calls for such an independent integrity entity, to change their minds. However, it is apparent, via the continued musical chairs in Cabinet due to disgraced Ministers, that establishing an external watchdog does not mitigate the overwhelming need to address the urgent need to fix the Assembly's own scrutiny and accountability functions.

In 2009 the Tasmanian Parliamentary Joint House Select Committee into Ethical Conduct noted in its final report that the issue of the size of Parliament had been raised during its public consultation stages:

"5.79 A matter allied to resourcing was the issue of the human resource available in terms of the membership of the Parliament. Such resource is drawn upon to provide members of the Executive; Presiding Officers and other Parliamentary Officers; members of standing and select committees.

²⁸ ABC Radio Statewide Mornings transcript, with the Hon. Sue Smith MLC, 16 April 2007.

²⁹ Review of the Proposal to Restore the House of Assembly to 35 Members, Emeritus Professor P. J. Boyce AO, Independent Appointee, 8 March 2011: pg 9.

5.80 *The Committee received a number of submissions which proposed that the reduction in the size of Parliament had negatively affected the standards of government of the State. The issue is a significant one and is of current interest to many in the community.*³⁰

The Ethical Conduct Select Committee then went on to include in its final report:

“Recommendation 14 – The Committee recommends that an independent inquiry be conducted into:-

a. whether or not there should be an increase of the number of members elected to the Legislative Council and the House of Assembly;

b. if an increase is recommended, to report on the way such increase should be achieved; and

*c. any matters incidental thereto.*³¹

This recommendation was not acted upon by neither the government nor parliament at the time, however it is arguable that the 2011 Boyer public consultation was a step towards doing so. However the main point here is that a Joint House Committee inquiry into the ethical conduct of Tasmania’s elected representatives, found a legitimate concern over the apparent ‘cause and effect’ relationship between the negative impact of the cut in MP numbers and the rising disquiet over the state of the integrity of Tasmania’s democratic and governance institutions.

2.3 Representativeness of the Assembly

Pre – 1998 Prediction: Previous investigations were consistent in their recommendations to respect the intent of the Hare-Clark system to provide the potential for an accurate reflection of the diverse make-up of the electorate. Recognising that for the Parliament to be genuinely of the people it needs to reflect the diversity of the people, both the Ogilvie and Morling inquiries were adamant that any changes which would erode the capacity of the Hare-Clark electoral system to deliver this should be avoided.

Post – 1998 Eventuality:

“The fact is that to ensure representation of all shades of opinion, as the framers of the Hare-Clark electoral system sought to do, there is an optimum size below which the parliament becomes unworkable... If we have sacrificed anything by slashing the number of politicians, it is only democratic representation.”³²

The integrity and intent of the state’s Hare-Clark system, which had received global recognition as one of the fairest electoral systems in place, has been affected negatively by the 1998 cut in MP numbers. Simply raising the threshold from 12.5 per cent to 16.7 percent, the cuts in numbers have effectively reduced the possibility of diversity amongst an electorate’s mix of elected representatives exacerbated by the current entrenchment of the two party system. While it is difficult to ‘prove’ that independent and minor party candidates would definitely have been

³⁰ *Public Office is Public Trust*, the Final Report of the Joint Select Committee on Ethical Conduct, July 2009: pgs 47-48.

³¹ *Ibid*: pgs 12-13.

³² Mr. Wayne Crawford, *the Mercury* newspaper, 2 May 2008: pg 38.

elected sixth or seventh if seven member electorates were still in place, it is just as difficult to prove that it would not be the case. Particularly as the last 35 Parliament did have an independent Member, Mr Bruce Goodluck in Franklin, as well as representatives of three political parties, a situation which has not been repeated since, despite a growing number of independents and parties contesting recent state elections.

A further unintended ramification of the contraction of our five state electorates from seven MPs to five is the situation which sees all elected MPs representing the party of government within an electorate serving in Cabinet together. For example, in the current Forty-Ninth Parliament both Liberal Members for Franklin, the Hon. Will Hodgman and the Hon. Jacquie Petrusma, are both serving in Cabinet, leaving Franklin voters without access to a government Backbencher representing their electorate. The same situation exists in Bass with all three current Liberal MPs also serving in Cabinet.

This situation compounds the previously discussed ramification of a virtually non-existent government Backbench, from the perspective of specific electorates. This illustrates the further erosion of the principles of accessibility and responsiveness that a functioning Backbench is intended to deliver in a Westminster-based Parliament.

2.4 Propensity for Balance of Power Situations

Pre – 1998 Prediction: As summarised in Part 1, prior to 1998 formal and independent advice had been received stating that, “experience indicates that the smaller the size of the House the greater the risk of deadlock or balance of power situations.”³³

Post – 1998 Eventuality: As the 2010-2014 Parliament illustrated with its 10-10-5 membership, those seeking to justify the gutting of the Tasmanian Parliament in the name of, and in order to guarantee, ‘majority government’ failed.

Other Matters of Consideration

Financial Considerations

The so-called argument that Tasmania cannot afford more politicians is spurious, populist and relies upon an incomplete assessment of all relevant costs and benefits.

A modern and sophisticated understanding recognises that not everything can be evaluated in financial dollar terms only. Which Australian state can afford maladministration, incompetence, institutionalised structural incapacity and inefficiency, paralysis and suspended animation in decision-making? Tasmanians deserve better than the current approach of, “we will make do with a limited political gene-pool which is spread too thin.”

Former Legislative Council President, the Hon. Sue Smith MLC used her valedictory speech to state:

“The people of Tasmania should accept and acknowledge that the cuts in the House of Assembly have cost them. Whilst there have been lots of figures argy-bargied about, the university actually

³³ *Report of the Advisory Committee on the Proposed Reduction in the Number of Members Elected to Both Houses of the Tasmanian Parliament*, Mr Albert Ogilvie, Sir Geoffrey Feet, Sir George Cartland, 19 October 1984: pg 28.

did the figures on bringing the numbers back up to what I think is a sustainable level and it was a \$3 million cost. People might say that \$3 million is a lot of money. I ask people the question when they talk about it, 'What has the cost been in not spending that \$3 million?' I urge members that if that issue comes up again you take a very broad look at the numbers because the responsibilities of the House of government are significant. It is not about the size of your state. They are required to send ministers and to have input through departments and advisers to all of these COAG processes now that happen. They do not say because there are fewer people in Tasmania that the responsibilities in that area will be less. In fact, over the past years, we have seen more responsibility for ministers in that arena..."³⁴

Another financial consideration is the current wasted expenditure incurred during the 2008 modernisation of the House of Assembly Chamber. This very necessary updating of the workplace not only saw it transformed to comply with modern expectations of facilitating non-abled MPs and staff, and other OH &S and IT considerations, it saw the return of furniture previously chain-sawed out. In terms of a simplistic analogy, this is similar to cycles in transport debates, where rail lines were ripped up and bitumised over, for people to now have to work out how to restore the rail lines again. Over ten years ago, in a rare move of foresight, the Parliament saw fit to restore our 'rail lines' with the re-insertion of desks and chairs that can facilitate a 35 Member Assembly – it just now needs the fortitude to leverage that over a decade-long investment and literally put 'bums on seats'.

Clearly there are additional financial costs to a return to a fully functioning body of 35 MPs, including appropriate offices and staffing arrangements. However, it is beyond the means and scope of this submission to extrapolate in any meaningful way, the extent to which a reduced reliance upon highly paid political appointees assisting Ministers and Parliamentary Secretaries trying to cope with 'mega-ministries could be offset by an increased capacity for elected representatives to undertake that work and share the load. Instead the crucial emphasis here is the potential to reforge democratic accessibility between the electorates and their range of elected representatives, including Backbench reps, Opposition reps and Ministers, democratic accountability, and both government and parliamentary productivity.

Any financial argument which solely evaluates the financial cost of MP salaries and office arrangements, but which does not offer an equally rigorous evaluation of potential gains in democratic and productivity outputs must be recognised for what it is, which is a partial-only, incomplete and insufficient evaluation.

³⁴ The Hon. Sue Smith MLC, the *Legislative Council Hansard*, Thursday, 18 April 2013.

Conclusion

The *Mercury* editorialised in June 2008:

*“Tasmania needs a bigger, stronger parliament to make the State Government more accountable.”*³⁵

Then, again in September 2008:

“Ten years ago, when the House of Assembly was reduced from 35 to 25 MPs and the Legislative Council from 19 to 15, it was supposed to save taxpayers a packet and reduce the dead wood and time-servers in Parliament. An added benefit for Labor and the Liberals was that the Greens would find it impossible to win seats.

It has done none of these things. No money has been saved, nor has it wiped out the Greens.

*Instead it has produced a weak rump of an Opposition, less scrutiny, more centralised control and a small Cabinet of overworked ministers who rely too much on expensive, unelected and accountable advisers.”*³⁶

A further ten years after that editorial, and other similar public statements, here we still are.

It should not be a surprise to the current Committee members if their current enquiry does not elicit numerous or detailed submissions, nor spark a large wave of general public interest, as, to be fair to the broader public, academics and political analysts, and current and former MPs– it has all been said before. Numerous times.

A critical mass, that respects the intent and integrity of the Hare-Clark electoral system, needs to be restored to the bicameral Tasmanian Parliament as a matter of urgency. The simplest and most ethical manner of doing so is by undoing the unethical and undemocratic 1998 cut in numbers by restoring seven-members to the current five electorates. Not for the benefit of any particular political party, individuals or vested corporate interests, but instead in the interests of good, effective, and accountable governance for Tasmanians.

³⁵ Editorial, the *Mercury* newspaper, 25 June 2008: pg 22.

³⁶ Editorial, the *Mercury* newspaper, 16 September 2008: pg 22.

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